



SDMS Doc ID 2010488



U.S. Department of Justice

Environment and Natural Resources Division

Assistant Attorney General
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Washington, DC 20530-0001

Telephone (202) 514-2701
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May 28, 2004

Keith Takata
Superfund Division Director
U.S. Environmental Protection Agency, Region 9
75 Hawthorne St.
San Francisco, CA 94105

Re: CERCLA Section 122(h) Administrative Agreement for Recovery of Past
Response Costs, CERCLA Docket no. 2004-0011, regarding the Denova
Superfund Site

Dear Mr. Takata:

This is to advise you that, pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9622(h), the United States Department of Justice, on behalf of the Environmental Enforcement Section of the Environment and Natural Resources Division, concurs in the enclosed CERCLA Section 122(h) Administrative Agreement for Recovery of Past Response Costs, CERCLA Docket no. 2004-0011, regarding the Denova Superfund Site.

If we can be of further assistance in this matter, please contact Valerie Mann of the Environmental Enforcement Section at 202/616-8756.

Sincerely,

Thomas L. Sansonetti
Assistant Attorney General

Enc.

IN THE MATTER OF:)	AGREEMENT FOR RECOVERY
)	OF PAST RESPONSE COSTS
Denova Environmental Superfund Site)	
Rialto, San Bernardino County, California)	U.S. EPA Region 9
)	CERCLA Docket No.2004-0011
Intercoastal, L.L.C.,)	
)	
Amberwick Corporation,)	
)	
Michael L. Webster, John C. Webster,)	PROCEEDING UNDER SECTION
Laurence Webster,)	122(h)(1) OF CERCLA
)	42 U.S.C. § 9622(h)(1)
and)	
)	
Carol Cole,)	
)	
SETTLING PARTIES)	
)	
)	

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Superfund Branch Chief by EPA Regional Order R9 1290.20.

2. This Agreement is made and entered into by EPA and Intercoastal, L.L.C., Michael L. Webster, John C. Webster, Laurence Webster, Amberwick Corporation, and Carol Cole, (collectively referred to as "Settling Parties"). Each Settling Party consents to and will not contest EPA's authority to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Denova Environmental Superfund Site ("Site") located at 2610 North Alder Ave, Rialto, San Bernardino County, California. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. The Site has been subject to CERCLA emergency and time critical response actions. The Site was historically utilized as a hazardous waste and explosives storage facility.

a. On March 14, 2001, EPA's Emergency Response Section and the Bureau of Alcohol, Tobacco, and Firearms identified six containers of highly explosive and shock sensitive tetrazene, a hazardous substance, at the Site. On June 12, 2001, the Action Memo was signed by the EPA Response, Planning and Assessment Branch Chief documenting that conditions at the Site met the criteria for a removal response action as outlined at Section 300.415(b)(2) of the National Contingency Plan ("NCP"). On June 14, 2001, EPA initiated a time critical removal action at the Site to destroy these highly explosive hazardous substances.

b. On May 28, 2002, EPA's Emergency Response Section initiated a second emergency removal action at the Site to address improperly stored hazardous materials and explosives. EPA's On Scene Coordinators ("OSCs") observed the following conditions at the Site:

i. The Site occupied approximately 20 acres and was divided into three sections. The northern most section contained a blast pit that was formerly permitted for the destruction of certain wastes. The middle section ("hazmat yard") contained six mobile concrete bomb shelters and nineteen conex shipping containers containing an array of hazardous wastes and explosive materials. The southern section (the "explosive yard") contained fifteen partially buried explosive storage magazines, approximately eight mobile explosive storage boxes, and eight conex boxes all of which contained and stored explosive, propellants and ordinance products.

ii. The hazmat yard included approximately 750 containers stored in nineteen conex boxes ("bays"), fifty 55-gallon drums containing a variety of acidic, corrosive, and flammable wastes, six mobile concrete bomb shelters containing highly explosive materials, and a blast pit. Hazardous substances identified in the bays included, but were not limited to, mercury, phosphoric acid, picric acid, nitric acid, sulfuric, acetic acid, hydrochloric acid, hydrofluoric acid, ethylene bromide, formaldehyde, toluene diisocyanate, lead styphnate, red phosphorus, and chlorine gas.

iii. Approximately 550,000 pounds of explosives were located on Site.

iv. There were several residential neighborhoods within close proximity to the Site. In the event of an explosion, these residents could have been exposed to hazardous substances which pose a significant human health threat through inhalation or dermal contact.

c. The removal of hazardous substances from the Site was determined necessary by the EPA OSCs in order to mitigate the imminent threat of release of hazardous substances into the local community and environment. On June 4, 2002, the Action Memo was signed by the EPA Response, Planning and Assessment Branch Chief documenting that conditions at the Site met the criteria for an emergency response removal as outlined at Section 300.415(b)(2) of the National Contingency Plan ("NCP").

d. On April 17, 2003, EPA perfected its CERCLA Section 107(I) lien on the Site.

e. Michael L. Webster, John C. Webster and Laurence Webster are directors of Amberwick Corporation. John C. Webster is the sole member of Intercoastal, L.L.C.

f. Amberwick Corporation is a transporter which accepted hazardous substances for transport to the Denova Site facility.

g. Carol Cole was a past owner during the time of disposal of hazardous substances at the Site.

5. In performing the response action, EPA has incurred response costs at or in connection with the Site.

6. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.

7. EPA and Settling Parties recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

8. This Agreement shall be binding upon EPA and upon Settling Parties and their heirs, successors, and assigns. Any change in ownership or corporate or other legal status of a Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Parties' responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her. The Parties agree that the actions undertaken by the Settling Parties in accordance with the Agreement do not constitute an admission of any liability.

IV. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Cole Party" shall mean Settling Party Carol Cole.

d. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

g. "Owner Party" shall mean Intercoastal, L.L.C.

h. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

i. "Parties" shall mean EPA and all Settling Parties.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site for the removal action described in the action memorandum for the Site dated June 12, 2001, June 4, 2002, August 26, 2002, and March 26, 2003, plus accrued Interest on all such costs.

k. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

l. "Settling Parties" shall mean the Amberwick Parties, Intercoastal, L.L.C. and the Cole Party.

m. "Site" shall mean the Denova Environmental Superfund Site, encompassing approximately 20 acres, located at 2610 North Alder Ave, Rialto, San Bernardino County, California, approximate latitude and longitude are North 34° 9' 17.5" and West 117° 24' 34.5", respectively. The Denova Site is further described in Appendix A.

n. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

o. "Amberwick Parties" shall mean Settling Parties Amberwick Corporation, Michael L. Webster, Laurence Webster and John C. Webster.

V. PAYMENT OF RESPONSE COSTS

10. The Settling Parties shall make payments to the EPA in reimbursement of Response Costs as defined herein below upon the following terms and conditions:

a. After EPA issues notice to Settling Parties that this Agreement is effective pursuant to Section XVIII, Owner Party shall sell the Site for fair market value. If sale of the Site does not occur before December 31, 2004, this Agreement and all covenants stated herein including Section VII shall be revoked unless EPA, at its sole discretion, extends the timeframe of performance in writing. Proceeds from the sale of the Site shall be placed into an escrow account upon closing of the sale of the Site. Intercoastal shall receive EPA's approval in naming the escrow agent no less than fifteen (15) days before the day of the closing on the sale of the Site. Failure to approve escrow within three (3) days before the sale of the Site shall be deemed a waiver of EPA approval.

b. Owner Party and Amberwick Parties shall ensure that \$640,000 of the proceeds from that sale is transferred to EPA directly from the escrow account within three (3) days after closing the sale of the Site.

c. Prior to or concurrent with Owner Party's conveyance of the Site, Amberwick Parties and Cole Party shall remove all liens or encumbrances on the Site as well as release any and all claims each may have to any ownership right in the Site. Specifically, the Cole Party shall ensure that all plaintiffs' claims within Robert V. Cole, et al. v. Intercoastal, et al., Case No. SCVSS 096757, Superior Court of San Bernardino, filed Nov. 13, 2002, will be dismissed with prejudice and the lis pendens associated with that lawsuit will be removed from the Site's chain of title.

d. Upon receipt of \$640,000 from the sale of the Site, EPA shall release its CERCLA Section 107(l) lien which was filed on April 17, 2003. Appendix C.

e. Five days before the date of closing on the sale of the Site, Settling Parties shall submit to EPA all agreements, contracts, escrow instructions and documentation regarding the transfer of the Site for EPA's concurrence to the terms of the sale and transfer.

f. Owner Party and Amberwick Parties shall ensure that payment to EPA shall occur through the transfer of the proceeds from the escrow account established for the sale of Site by an Electronic Funds Transfer ("EFT").

11. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Owner Party by EPA Region 9, and shall be accompanied by a statement identifying the name and address of the parties making payment, the Site name, the EPA Region and Site/Spill ID Number 09HB, and the EPA docket number for this action.

12. At the time of payment, Settling Parties shall also send notice that payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 09HB and the EPA docket number for this action.

13. The total amount to be paid pursuant to Paragraph 10 by Settling Parties to the United States shall be deposited in the Denova Site Special Account within the EPA Hazardous Substance Superfund. This Special Account shall be retained and used to conduct or finance response actions at or in connection with the Denova Site or the Rialto Colton Plume Site, or may be transferred by the EPA from this Special Account to the EPA Hazardous Substance Superfund.

VI. FAILURE TO COMPLY WITH AGREEMENT

14. Stipulated Penalty.

a. If the sale of the Site does not occur, stipulated penalties shall not apply.

b. If any Settling Party(s) does not comply with the terms in Paragraph 10, that Settling Party(s) shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, \$5,000 per violation per day of such non-compliance for the first thirty days, \$10,000 per violation per day of noncompliance for days thirty-one through sixty, and \$25,000 per violation per day of noncompliance thereafter.

c. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the parties making payment, the Site name, the EPA Region and Site Spill ID Number 09HB, and the EPA Docket Number for this action. Settling Parties shall send the check (and any accompanying letter) to:

EPA Superfund
U.S. Environmental Protection Agency
Attn: David Wood
Region 9, Attn.: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

d. At the time of each stipulated penalty payment, Settling Parties shall also send notice that payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such notice shall identify the EPA Region and Site Spill ID Number 09HB and the EPA Docket Number for this action.

e. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due and shall continue to accrue through the date of payment or performance under this Agreement. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

15. In addition to the Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Parties' failure to comply with the requirements of this Agreement, any Settling Party who fails or refuses to comply with the requirements of this Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

16. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Payment of stipulated penalties shall not excuse Settling Parties from payment and performance as required by Section V or from performance of any other requirements of this Agreement.

VII. COVENANT NOT TO SUE BY EPA

17. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Parties pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Payment of Response Costs) and any amounts due under Section VI (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this Agreement. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

VIII. RESERVATION OF RIGHTS

18. The covenant not to sue set forth in Section VII above does not pertain to any matters other than those expressly specified in Section VII (Covenant Not to Sue by EPA). The United States reserves and the Agreement is without prejudice to all rights against Settling Parties with respect to all other matters, including but not limited to, the following:

- (a) liability for failure of Settling Parties to meet a requirement of this Agreement;
- (b) liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;

(c) liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

(d) criminal liability; and

(e) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

19. Nothing in this Agreement is intended as a release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

IX. COVENANT NOT TO SUE BY SETTLING PARTIES

20. Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

21. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

22. Settling Parties agree to not assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Parties with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

23. The waiver in Paragraph 22 shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Party. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

24. Except as provided in Paragraphs 22 and 23, nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. Except as provided in Paragraphs 22 and 23, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

25. EPA and Settling Parties agree that the actions undertaken by Settling Parties in accordance with this Agreement do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain the right to controvert all liability and factual allegations contained herein and assert any and all defenses available to them in any subsequent proceedings other than proceedings to implement or enforce this Agreement.

26. The Parties agree that Settling Parties are entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs.

27. Each Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to

this Agreement.

28. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VII.

XI. SITE ACCESS

29. Notwithstanding any provision of this Agreement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to re-enter the Site in the future, require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XII. ACCESS TO INFORMATION

30. Settling Parties shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, agreements, contracts or other documents or information related to the Site, except to the extent protected under attorney work product and attorney client privilege.

31. Confidential Business Information and Privileged Documents.

a. Settling Parties may assert business confidentiality claims covering part or all of the records submitted to EPA under this Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Parties that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Parties.

b. Settling Parties may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege in lieu of providing records, they shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a

portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Parties shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Parties' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

32. No claim of confidentiality shall be made with respect to any data including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIII. RETENTION OF RECORDS

33. Until three years after the effective date of this Agreement, each Settling Party shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

34. After the conclusion of the three-year document retention period in the preceding Paragraph, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such records. Settling Parties may then, at their discretion, destroy any records related to the Site or this Agreement provided that EPA has not requested a copy of the records or the original.

35. Each Settling Party hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIV. NOTICES AND SUBMISSIONS

36. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Parties.

As to EPA:

Thanne Cox
United States EPA Region 9
Office of Regional Counsel
Mail Code ORC-3
75 Hawthorne Street
San Francisco, California 94105

As to Owner Party and Amberwick Parties:

Carmen A. Trutanich, Bar No: 86629
Trutanich & Michel, LLP
407 North Harbor Boulevard
San Pedro, California 90731
(310) 548-0410

As to Cole Party:

David McDonnell, Esq.
23704-5 El Toro Road
No. 161
Lake Forest, California 92630
(949) 305-7614

XV. INTEGRATION/APPENDICES

37. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendices are attached to and incorporated into this Agreement: "Appendix A" is legal description of the Site; "Appendix B" is the map of the Site; and "Appendix C" is the Certificate of Release of Lien Under Section 107(l), Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) 42 U.S.C. § 9707(l).

XVI. PUBLIC COMMENT

38. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XVII. ATTORNEY GENERAL APPROVAL

39. The Attorney General or his designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

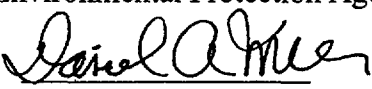
XVIII. EFFECTIVE DATE

40. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 38 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

THE UNDERSIGNED enters into this Agreement on behalf of the United States Environmental Protection Agency in the matter of CERCLA Docket No. 9-2004-0011 relating to the Denova Environmental Site in Rialto, San Bernardino County, California.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By: 
Daniel Meer, Chief
Response, Planning, and Assessment Branch
Region 9

12 April 2004
Date

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of CERCLA Docket No. 9-2004-0011 relating to the Denova Environmental Site in Rialto, San Bernardino County, California.

FOR SETTLING PARTY: John C. Webster

P.O. Box 92918

Long Beach, CA 90809

[Address]

By: 
John C. Webster

2/4/2004

[Date]

FOR SETTLING PARTY: Michael L. Webster

16072 Windemeir

Huntington Beach, CA 92647

[Address]

By: 
Michael L. Webster

2/4/2004

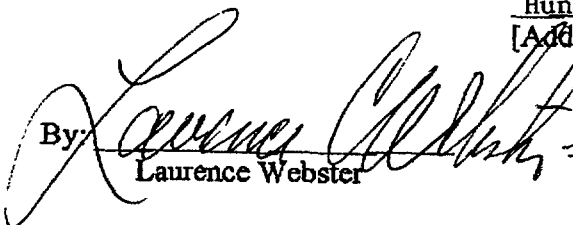
[Date]

FOR SETTLING PARTY: Laurence Webster

16371 Ardsley Circle

Huntington Beach, CA 92649

[Address]

By: 
Laurence Webster

2/4/2004

[Date]

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of CERCLA Docket No.9-2004-0011 relating to the Denova Environmental Site in Rialto, San Bernardino County, California.

FOR SETTLING PARTY:

Carol Cole

75 Teloma Dr

Ventura, CA 93003
[Address]

By: Carol Cole
Carol Cole

2/13/04
[Date]

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of CERCLA Docket No. 9-2004-0011 relating to the Denova Environmental Site in Rialto, San Bernardino County, California.

FOR SETTLING PARTY:

Intercoastal, L.L.C.

P.O. Box 92918

Long Beach, CA 90809

[Address]

By: 

Authorized Agent

2/4/2004

[Date]

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of CERCLA Docket No. 9-2004-0011 relating to the Denova Environmental Site in Rialto, San Bernardino County, California.

FOR SETTLING PARTY:

Amberwick Corporation

2304 W. 16th Street

Long Beach, CA 90813
[Address]

By: 

Authorized Agent

2/4/04

[Date]

Appendix A

Legal Description of Denova Site

2610 North Alder Avenue, Rialto, California 92377 (Denova Environmental Treatment Storage and Disposal Facility) is comprised of three parcels:

- APN 0239-161-**32**-0000: 9.51 acres.
- APN 0239-161-**08**-0000: 5.0 acres.
- APN 0239-161-**07**-0000: 5.0 acres.

Assessor Parcel Number 0239-161-32-0000 and 0239-161-08-0000

All title documents combine parcel 32 and 08 into a single legal description. The current Legal Property Description based on the last document in the chain of title, recorded July 16, 2002, states the legal description as:

Parcel No. 1: The East one-half of the Southwest one-quarter of the Southeast one-quarter of Section 20, Township 1 North, Range 5 West, San Bernardino Meridian, County of San Bernardino, State of California, according to the official plat thereof.

Excepting therefrom, the North one-quarter thereof.

Also excepting therefrom that portion conveyed to the City of Rialto by Deed recorded November 20, 1984 as Instrument No. 84-279299, Official Records.

Parcel 1A:

An easement for ingress, egress and roadway and purposes over and across the North 30 feet of the Northwest one-quarter of Section 29, Township 1 North, Range 5 West, San Bernardino Meridian, County of San Bernardino, State of California, according to the official plat thereof.

Parcel 1B:

An easement for ingress, egress and roadway and purposes over and across the South 30 feet of the West one-half of the Southwest one-quarter of the Southeast one-quarter of said Section 20, Township 1 North, Range 5 West, San Bernardino Meridian, County of San Bernardino, State of California, according to the official plat thereof.

Parcel 1C:

An easement for ingress, egress and roadway and purposes over and across the East 60 feet of the South feet of the East one-half of the Southwest one-quarter of said Section 20, Township 1 North, Range 5 West, San Bernardino Meridian, County of San Bernardino, State of California, according to the official plat thereof.

Assessor Parcel Number 0239-161-07-0000

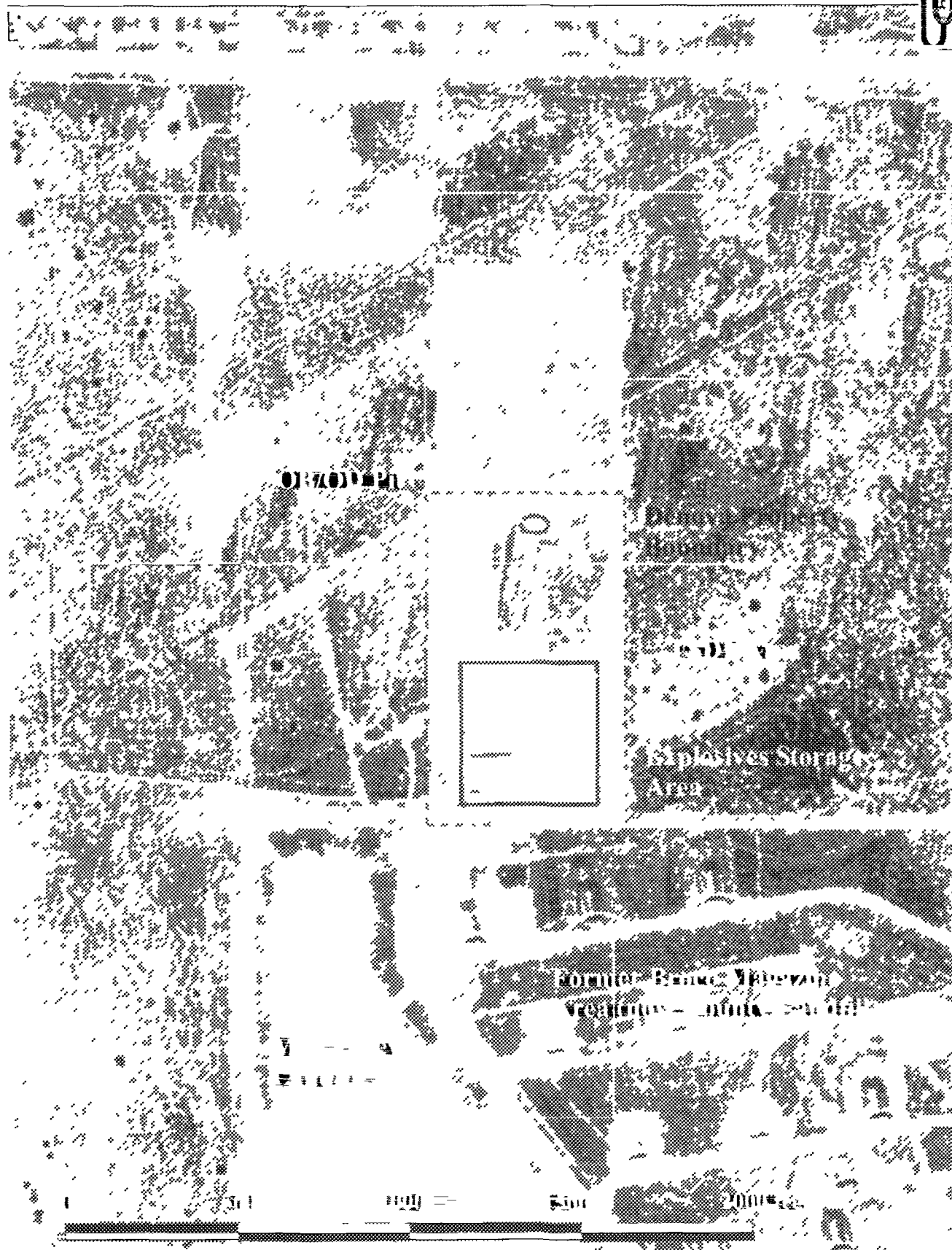
The current Legal Property Description based on the last document in the chain of title, recorded July 16, 2002, states the legal description as:

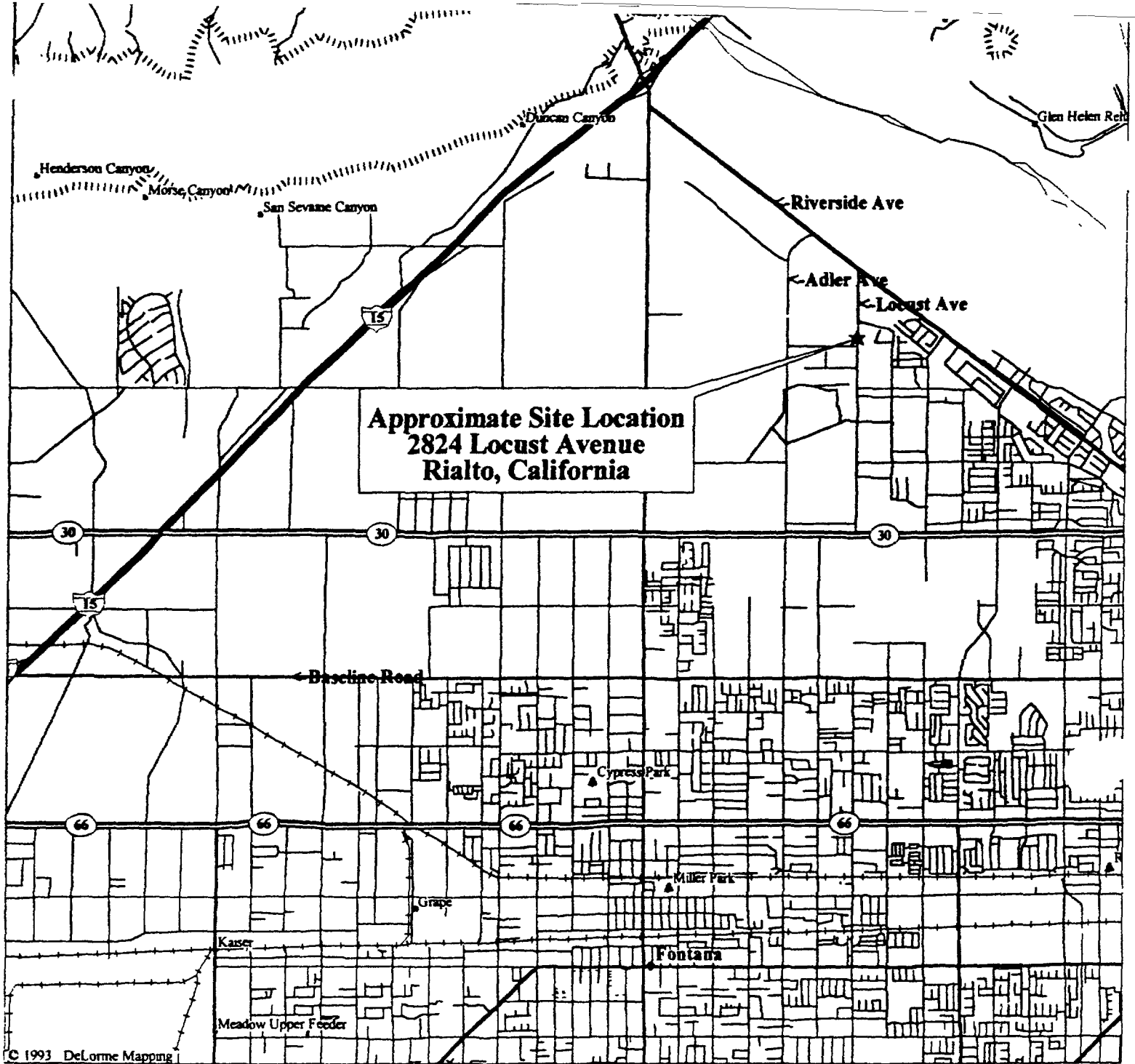
Parcel 2:

The North one-half of the Northeast Quarter of the Southwest quarter of the Southeast quarter of Section 20, Township 1 North, Range 5 West, San Bernardino Base and Meridian, County of San Bernardino, State of California, according to the official plat thereof.

Appendix B

Map of the Site





LEGEND

- | | |
|------------------------|----------------------|
| — State Route | — Major Street/Road |
| □ Geo Feature | --- Street, Road |
| ◆ Town, Small City | — Interstate Highway |
| ▲ Park | — State Route |
| — Interstate, Turnpike | — Railroad |
| Population Center | — River |
| — Street, Road | — Open Water |
| — Hwy Ramp | Contours |

Scale 1:62,500 (at center)

1 Miles

2 KM

Figure 1: Site Location Map

Mag 13.00

Fri Jun 08 13:50:09 2001

Appendix C

Certificate of Release of Lien

1
2 RECORDING REQUESTED BY:

3
4 AND WHEN RELEASED MAIL TO:
5

6
7 CERTIFICATE OF RELEASE
8 OF LIEN UNDER SECTION 107(1)
9 COMPREHENSIVE ENVIRONMENTAL RESPONSE,
10 COMPENSATION & LIABILITY ACT (CERCLA)
11 42 U.S.C. § 9607(1)

12
13 **LIEN #2003-0254841 DATE FILED: APRIL 17, 2003**

14 COUNTY: San Bernardino, STATE OF: California
15 A.P.N. No. 0239-161-07-000, 0239-161-08-000, and
16 0239-161-32-000

17 The lien for costs and damages provided by Section 107 of
18 CERCLA for which Intercoastal, LLC, or Amberwick, Inc., are
19 liable to the United States under 42 U.S.C. § 9607 is hereby
20 released. This Certificate of Release authorizes the proper
21 officer in the office where the Notice of Lien No. 2003-0254841
22 was filed on April 17, 2003, to note in the records to show the
23 release of this lien for those costs and damages. The real
24 property subject to this lien is located at 2610 North Alder Ave,
25 Rialto, San Bernardino County, California, and more particularly
26 described as follows:

27
28 Legal Property Description:

Parcel 1: (Assessor Parcel Number 0239-161-32-0000 and 0239-
161-08-0000) The East one-half of the Southwest one-
quarter of the Southeast one-quarter of Section 20, Township
1 North, Range 5 West, San Bernardino Meridian, County of

1 San Bernardino, State of California, according to the
2 official plat thereof. Excepting therefrom, the North one-
3 quarter thereof. Also excepting therefrom that portion
4 conveyed to the City of Rialto by Deed recorded November 20,
5 1984 as Instrument No. 84-279299, Official Records.

6
7 Parcel 1A: An easement for ingress, egress and roadway and
8 purposes over and across the North 30 feet of the Northwest
9 one-quarter of Section 29, Township 1 North, Range 5 West,
10 San Bernardino Meridian, County of San Bernardino, State of
11 California, according to the official plat thereof.

12
13 Parcel 1B: An easement for ingress, egress and roadway and
14 purposes over and across the South 30 feet of the West one-
15 half of the Southwest one-quarter of the Southeast one-
16 quarter of said Section 20, Township 1 North, Range 5 West,
17 San Bernardino Meridian, County of San Bernardino, State of
18 California, according to the official plat thereof.

19
20 Parcel 1C: An easement for ingress, egress and roadway and
21 purposes over and across the East 60 feet of the South feet
22 of the East one-half of the Southwest one-quarter of said
23 Section 20, Township 1 North, Range 5 West, San Bernardino
24 Meridian, County of San Bernardino, State of California,
25 according to the official plat thereof.

26
27 Parcel 2: (Assessor Parcel Number 0239-161-07-0000)

28 The North one-half of the Northeast Quarter of the Southwest

1 quarter of the Southeast quarter of Section 20, Township 1
2 North, Range 5 West, San Bernardino Base and Meridian,
3 County of San Bernardino, State of California, according to
4 the official plat thereof.

5
6 Commonly known as Assessor's Parcel Numbers: 0239-161-
7 32-0000, 0239-161-08-0000, and 0239-161-07-0000
8

9 Dated at San Francisco, California, this __ day of
10 _____, 2004.

11 UNITED STATES OF AMERICA
12 UNITED STATES ENVIRONMENTAL
13 PROTECTION AGENCY

14 _____
15 Daniel Meer, Chief
16 Response, Planning, and
17 Assessment Branch
18 U.S. EPA, Region IX
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